



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201121034

Uniform Issue List: 408.03-00

FEB 28 2011

XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

T:EP:RA:T2

Legend:

Taxpayer A	=	XXXXXXXXXXXXXXXXXX
Taxpayer B	=	XXXXXXXXXXXXXXXXXX
Financial Institution A	=	XXXXXXXXXXXXXXXXXX
Financial Institution B	=	XXXXXXXXXXXXXXXXXX
Account A	=	XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXX
Form A	=	XXXXXXXXXXXXXXXXXX
Amount A	=	XXXXXXXXXXXXXXXXXX
Date 1	=	XXXXXXXXXXXXXXXXXX
IRA X	=	XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXX
Year 1	=	XXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXX:

This letter is in response to your ruling request dated September 28, 2010, and supplemented by correspondence dated December 30, 2010, submitted on your behalf by your authorized representative, in which you requested a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 76, represents that on Date 1, she received a distribution from IRA X totaling Amount A. Taxpayer A asserts that her failure to accomplish a rollover of Amount A within the 60-day period prescribed by section 408(d)(3) was due to an error made by Financial Institution B. Taxpayer A also represents that Amount A has not been used for any other purpose.

Taxpayer A represents that she is the owner of IRA X, which was maintained by Financial Institution A. On Date 1, when IRA X matured, Taxpayer A requested a direct rollover from Financial Institution A and attempted to rollover Amount A to a rollover IRA with Financial Institution B. Taxpayer A and Taxpayer B went to their local branch of Financial Institution B where they maintained existing accounts to set up a rollover IRA. Taxpayer A delivered a check from Financial Institution A in Amount A payable to Financial Institution B f/b/o Taxpayer A. An employee at Financial Institution B completed Form A and inadvertently set up the account in Taxpayer B's name instead of Taxpayer A's name. Form A was processed and Financial Institution B deposited Amount A into an IRA for the benefit of Taxpayer B instead of Taxpayer A.

Taxpayer A represents further that, she did not realize that Amount A had been rolled over into the wrong account because Taxpayer B also maintains an IRA at Financial Institution B. Taxpayer A believed that Amount A remained in a qualified account in her name for her benefit. As a result, Taxpayer A was unaware of the incorrect titling error until Year 1, when Taxpayer B was reviewing the couple's finances.

Documentation provided shows that an employee at Financial Institution B incorrectly deposited Amount A into an IRA account for the benefit of Taxpayer B instead of an IRA for Taxpayer A. Documentation also shows that on Date 1, IRA X issued a check in Amount A payable to Financial Institution B for the benefit of (FBO) Taxpayer A.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount A from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

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(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by an error made by Financial Institution B, which resulted in Amount A being deposited into an IRA account for Taxpayer B instead of Taxpayer A.

Therefore, pursuant to section 408(d)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A, from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling

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letter to contribute Amount A to a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount A will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of any amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXX (ID XX-XXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,



Donzell Littlejohn, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose